

§ 76.19

(14) Exercise such other authority as necessary to carry out the responsibilities of the Judge under this part.

(c) The Judge does not have the authority to rule upon the validity of federal statutes or regulations.

§ 76.19 Prehearing conferences.

(a) *Purpose and scope.* Upon motion of a party or in the Judge's discretion, the Judge may direct the parties or their counsel to participate in a prehearing conference at any reasonable time prior to a hearing, or during the course of a hearing, when the Judge finds that the proceeding would be expedited by such a conference. Prehearing conferences normally shall be conducted by telephone unless, in the opinion of the Judge, such method would be impractical, or when such conferences can be conducted in a more expeditious or effective manner by correspondence or personal appearance. Reasonable notice of the time, place, and manner of the prehearing conference shall be given. At the conference, the following matters may be considered:

- (1) The simplification of issues;
 - (2) The necessity of amendments to pleadings;
 - (3) The possibility of obtaining stipulations of facts and of the authenticity, accuracy, and admissibility of documents, which will avoid unnecessary proof;
 - (4) The limitations on the number of expert or other witnesses;
 - (5) Negotiation, compromise, or settlement of issues;
 - (6) The exchange of copies of proposed exhibits;
 - (7) The identification of documents or matters of which official notice may be required;
 - (8) A schedule to be followed by the parties for completion of the actions decided at the conference; and
 - (9) Such other matters, including the disposition of pending motions and resolution of issues regarding the admissibility of evidence, as may expedite and aid in the disposition of the proceeding.
- (b) *Reporting.* A verbatim record of the conference shall not be kept unless directed by the Judge.
- (c) *Order.* Actions taken as a result of a prehearing conference shall be re-

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duced to a written order unless the Judge concludes that a stenographic report shall suffice or, if the conference takes place within seven (7) days of the beginning of a hearing, and the Judge elects to make a statement on the record at the hearing summarizing the actions taken.

§ 76.20 Consent Order or settlement prior to hearing.

(a) *Generally.* At any time after the commencement of a proceeding, the parties jointly may move to defer the hearing for a reasonable time to permit negotiation of a settlement or an agreement containing findings and an order disposing of the whole or any part of the proceeding. The allowance of such deferment and the duration thereof shall be at the discretion of the Judge, after consideration of such factors as the nature of the proceeding, the requirements of the public interest, the representations of the parties, and the probability of reaching an agreement which will result in a just disposition of the issue involved. The Judge may require the parties to submit progress reports on a regular basis as to the status of negotiations.

(b) *Consent orders.* Any agreement containing consent findings and an order disposing of a proceeding or any part thereof shall also provide:

- (1) That the order shall have the same force and effect as an order made after full hearing;
- (2) That the entire record on which any order may be based shall consist solely of the complaint or notice of administrative determination (or amended notice, if one is filed), as appropriate, and the agreement;
- (3) A waiver of any further procedural steps before the Judge; and
- (4) A waiver of any right to challenge or contest the validity of the order entered into in accordance with the agreement.

(c) *Submission.* On or before the expiration of the time granted for negotiations, the parties or their counsel may:

- (1) Submit the proposed agreement containing consent findings and an order for consideration by the Judge; or
- (2) Notify the Judge that the parties have reached a full settlement and